Decision **DRAFT DECISION OF COMMISSIONER LYNCH AND ALJ GOTTSTEIN (Mailed 2/26/2002)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing Energy Efficient, Low-Income Assistance, Renewable Energy And Research Development and Demonstration.	Rulemaking 98-07-037 (Filed July 23, 1998)

INTERIM OPINION ADDRESSING SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S PETITION FOR MODIFICATION OF DECISION 01-03-073

1. Introduction and Summary

By Decision (D.) 01-03-073, dated March 27, 2001, the Commission adopted program initiatives for load control and self-generation, pursuant to Pub. Util. Code § 399.15(b).[1] Today's decision addresses the Petition For Modification of D.01-03-073 (Petition) filed on December 7, 2001 by the South Coast Air Quality Management District (SCAQMD). In its Petition, SCAQMD requests clarification concerning the issue of incentive funding from multiple public entities.

"Self-generation" refers to distributed generation technologies (microturbines, small gas turbines, wind turbines, photovoltaics, fuel cells and internal combustion engines) installed on the customer's side of the utility meter

[1] All statutory references are to the Public Utilities Code, unless otherwise noted.

that provide electricity for either a portion or all of that customer's electric load. Under the program adopted in D.01-03-073, financial incentives are provided to three different categories (or levels) of distribution technologies:

Level 1: The lesser of $4.50 / watt or 50% of project costs for photovoltaics, wind turbines and fuel cells operating on renewable fuels;

Level 2: The lesser of $2.50 / watt or 40% of project costs for fuel cells operating on non-renewable fuel and utilizing sufficient waste heat recovery, and

Level 3: The lesser of $1.00 / watt or 30% of project costs for microturbines, internal combustion engines and small gas turbines utilizing sufficient waste heat recovery and meeting reliability criteria.

The Commission authorized combined annual budgets of $125 million for Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) over a four-year period.[2] The program was officially launched on June 29, 2001.

By today's decision, we clarify that a project may receive incentives under the § 399.15(b) self-generation program as well from multiple public agencies, with certain restrictions. Total project costs must be reduced by incentives from other public agencies before the incentive formula (percentage) under the self-generation program is applied. In this way, project developers are afforded the opportunity to effectively leverage financial resources for distributed generation

[2] PG&E, SoCal, SDG&E and SCE are referred to collectively as "the utilities" throughout this decision.

from a variety of sources, but we are assured that the combined incentives do not exceed out-of-pocket expenses for the project. However, we retain the specific restriction we adopted in D.01-03-073 for the CEC's Emerging Renewables Buy-Down Program, namely, that § 399.15(b) self-generation incentives be used to supplement the CEC's project funding up to the incentive limits adopted for the self-generation program. We modify D.01-03-073 and the Self-Generation Incentive Program Handbook, accordingly.

2. SCAQMD's Petition and Comments in Response

SCAQMD requests that D.01-03-073 be clarified to allow distributed generation resources to receive incentive funding from multiple public entities without affecting the level of incentives under the self-generation program. SCAQMD contends that the program incentive is currently reduced by one dollar for every dollar provided by air district, state or federal government funds. In SCAQMD's view, neither the Legislature nor the Commission intended this approach to multiple funding sources. SCAQMD argues that prohibiting incentives from other public agencies for self-generation program participants will defeat the purpose of encouraging cleaner technologies, particularly fuel cells. RealEnergy, Inc. (RealEnergy) filed comments on January 4, 2002 in support of SCAQMD's Petition.

SCE opposes SCAQMD's Petition on several grounds. First, SCE argues that there is no support in either the language of Assembly Bill (AB) 970 or D.01-03-073 to for SCAQMD's claim that the Commission did not intend to limit

ratepayer funding through restrictions against "double dipping."[3] Second, SCE argues there is no evidence that the current scope of incentive payments does not best accomplish the Commission's goals. In particular, SCE contends that making fuel cell technologies competitive with other generation technologies is not the goal of the program. Finally, SCE argues that lifting the restriction on double dipping will not necessarily encourage the use of cleaner technologies.

3. Discussion

In considering SCAQMD's Petition, we first look to the language of the statute and the Commission decision authorizing the self-generation program. We agree with SCE that an examination of AB 970 and § 399.15(b) quickly reveals that the Legislature expressed no guidance on the extent or scope of incentives for distributed generation. The Legislature simply directed the Commission to adopt demand-side management and other initiatives to reduce the demand for electricity and reduce load during peak periods, including incentives for distributed generation resources. Based on the plain language of the statute, it is impossible to glean any legislative intent on the issue raised by SCAQMD's Petition.

However, D.01-03-073 does address coordination and eligibility issues with respect to the California Energy Commission's (CEC) Emerging Renewables Buy-Down Program in response to parties' concern over the potential overlap between that program and the Commission's self-generation incentives.[4] To

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[3] Response of SCE to the Petition of SCAQMD to Modify the Interim Opinion, dated January 7, 2002, p. 2.

[4] D.01-03-073, mimeo. pp. 28, 36-38.

address these concerns, the Commission determined that "customers installing self-generation systems eligible for the CEC buy-down program should be allowed to augment the funding received from that program with funding available from today's adopted self-generation program, up to the maximum incentive limits."[5] In addition, the decision discusses coordination between SoCal and SCE's programs to ensure that customers do not receive incentives for the same self-generation equipment from both utilities, since they generally serve the same service territory.[6]

With respect to coordination with other entities or incentive programs, whether offered by state, local, regional or federal agencies, the discussion section of the decision is silent, as are the Conclusions of Law and Ordering Paragraphs. In fact, the only reference to this issue, or to the term "double dipping," appears in the first sentence of Finding of Fact 28:

> "Careful coordination is required to ensure that consumers are not 'double dipping' and inappropriately receiving incentives from more than one program, whether sponsored by this Commission, CEC, the ISO or other state agencies…."

Apparently, Finding of Fact 28 was inadvertently retained from an earlier version of the decision, where the corresponding decision text was deleted before the decision became final. In particular, the Draft Decision of Commissioner Lynch and Administrative Law Judge Gottstein issued on March 2, 2001 (Draft Decision) contained the following language:

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[5] *Ibid.,* Conclusion of Law 20. See also p. 36 and Ordering Paragraph 15.

[6] *Ibid.,* p. 38.

> "Administrators of the new demand-responsiveness and self-generation program should take steps to ensure that consumers are not 'double-dipping' and inappropriately receiving incentives from more than one program, whether sponsored by this Commission, CEC, the ISO or other state agencies. The only exception is that customers installing self-generation systems eligible for the CEC buy-down program may augment the funding received from that program with funding available from today's adopted self-generation program, up to the maximum incentive limits described above...."[7]

Finding of Fact 29 of the Draft Decision echoes this language, but was apparently not deleted or modified in the final version of the decision (as Finding of Fact 28) when the decision text was removed and corresponding Ordering Paragraph 15 was modified.

We therefore cannot conclude, as SCE does, that the Commission's clear intent was to preclude other funding agencies from augmenting the self-generation incentives provided under the Commission's program. When corrected for the inadvertent inclusion of deleted language in Finding of Fact 28, the decision language simply specifies how § 399.15(b) self-generation incentives are to be used in conjunction with the CEC's Emerging Renewables Buy-Down program, which was the focus of concern at the time.

In fact, the Commission recognized that further consideration of coordination and eligibility issues would be needed as new programs to encourage self-generation and demand-responsiveness programs emerged over time:

[7] Draft Decision, p. 34.

> "We recognize that additional incentives for self-generation and demand-responsiveness programs may be authorized by the Legislature in the coming months. As several parties point out, additional issues regarding eligibility and coordination may need to be addressed at that time. We delegate to the Assigned Commissioner the task of clarifying these and other implementation issues by ruling, if and when such a need arises."[8]

SCAQMD's Petition raises this issue with respect to incentive funding from other public agencies. For the reasons discussed above, we believe that D.01-03-073 does not address the manner in which the § 399.15(b) self-generation incentives should be coordinated with funding from those entities, and we provide that guidance below.

In its Petition, SCAQMD claims that § 399.15(b) self-generation incentives are currently reduced "by one dollar for every dollar provided by AQMD funds or state or federal government funds," and objects to any such reduction.[9] Our review of the Self-Generation Incentive Program Handbook indicates that this statement is only partially true.[10] Section 3.4.3 ("Other Incentives or Rebates") states, in relevant part:

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[8] *Ibid.*

[9] SCAQMD Petition, p. 3.

[10] *Self-Generation Incentive Program Handbook*, revised October 29, 2001. This handbook provides the implementation details for the § 399.15(b) self-generation incentive program, and was developed per the working group process established in D.01-03-073 and per D.01-06-035, Ordering Paragraph 4. We note that SCAQMD may have based its Petition on the language of an earlier version of the program handbook (July 26, 2001 revision 1), that appears to have applied a dollar-for-dollar reduction in incentives to funding sources from federal and local governmental entities, as well as state governmental entities or utilities.

> "The combined incentives received from this and any other incentive program offered by *state government entities or utilities* cannot exceed the incentives offered through this program. *Federal and local (non-State)* incentives are allowed; however, the amount of the incentive must be subtracted from the Total Project Cost (Section 3.4.1). In order to prevent 'double dipping,' Applicants are required to disclose information about all other incentives they may receive. Program Administrators will enter applications into a statewide database that will permit universal tracking of applications for this and other programs, such as, but not limited to the CEC Emerging Renewables Buy-Down Program. Tax credits are not considered an incentive that must be disclosed under this requirements." (Emphasis added.)

Our interpretation of this language is best illustrated by a simple numerical example. Assume that the project costs for a fuel cell project operating on renewable fuels totaled $10 million, and that a state program (e.g., the CEC Emerging Renewables Buy-Down Program) offered a rebate of 20% of total project costs, or $2 million. Under the § 399.15(b) self-generation program adopted in D.01-03-073, this Level 1 project would be eligible for $5 million (or 50% of the project cost). As stated above, for incentive programs offered by *state* programs, the combined incentives received by the applicant cannot exceed the incentives offered through the § 399.15(b) self-generation program. Thus, the applicant could apply to the self-generation program for $3 million, which represents the difference between the CEC rebate of $2 million and the $5 million available under the § 399.15(b) self-generation program. In this instance, the incentive level would be reduced dollar-for-dollar by the amount offered by the CEC, as SCAQMD contends.

However, according to the program handbook, if the same fuel cell project received a rebate of 20% of project costs ($2 million) from a *federal or local*

program source, the incentive amount available under the § 399.15(b) self-generation program would be $4 million. The $4 million is calculated by subtracting $2 million from the $10 million in total project costs, and applying the 50% incentive level to the difference. In this instance, the incentive level would not be reduced dollar-for-dollar, as SCAQMD contends, but rather, the total costs to which the incentive formula is applied would be reduced to reflect the actual out-of-pocket costs now facing the project developer.

It appears that this distinction in incentive treatment between "state" and "non-state" funding sources that appears in the program handbook was developed to reflect the language of the first sentence of Finding of Fact 28. As discussed above, we do not believe that such a distinction was intended by D.01-03-073, since Finding of Fact 28 appears to have been inadvertently retained in unmodified form in the final decision.

Moreover, the language of Finding of Fact 28 does not direct that incentives offered for other programs offered by state agencies must be coordinated with the § 399.15(b) self-generation program in the same manner we adopted for the CEC's Emerging Renewables Buy-Down Program in D.01-03-073. Our approach to coordinating with the CEC's program was intended to target the larger renewables (over 30 kW) that were not being reached under that program, but at the same time not to duplicate the CEC's buy-down program or efforts. Offering a financial incentive that could be used to supplement the CEC's buy-down incentive level, up to the incentive limits established in D.01-03-073, fulfills this objective.

However, as SCAQMD and RealEnergy point out in their filings, other governmental agencies may be interested in encouraging and fostering alternative technologies in other ways, and for other reasons. We find no

justification, based on D.01-03-073 or the record in this proceeding, to restrict this process by categorically applying the approach adopted for CEC's Emerging Renewables Buy-Down Program to all other incentive programs for distributed generation initiated by "state governmental entities." Nor do we find justification for treating those other state sources of funding differently from federal or local sources in the calculation of incentives. Instead, we believe that the approach described in the Program Handbook for "federal and local" incentives is reasonable for those programs as well, because it enables a project developer to effectively leverage financial resources from a variety of sources, while ensuring that the combined contributions from public entities do not exceed the out-of-pocket expenses for the project.

Based on the above, we grant SCAQMD's request to clarify or modify D.01-03-073 to allow multiple incentives for self-generation projects, such that a project may receive incentives from a utility as well as from multiple public agencies. SCAQMD Petition does not specify the manner in which we should calculate program incentives based on this general policy. However, as discussed above, we believe that the approach contained in the Program Handbook for federal and local funding sources is a reasonable one to apply to all public funding sources (other than the CEC's Emerging Renewables Buy-Down Program), including municipal utilities.[11] In no event, however, should § 399.15(b) self-generation incentives in combination with incentives from other

[11] By D.02-02-026, issued on February 7, 2002, the Commission authorized the utilities to offer § 399.15(b) self-generation incentives to their gas customers that take electric service from municipal utilities. To the extent that municipal utilities also provide incentives for self-generation, the approach discussed above for calculating AB 970 self-generation incentives should apply.

public sources exceed the out-of-pocket expenses for the project. We will modify the language of D.01-03-073 and the Program Handbook, accordingly. The utilities should immediately implement the § 399.15(b) self-generation program consistent with today's direction.

4. Comments on Draft Decision

The draft decision of Commissioner Lynch and Judge Gottstein in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7(f)(9) of the Rules of Practice and Procedures. Comments were filed by _____.

Findings of Fact

1. AB 970 and § 399.15(b) express no guidance on the extent or scope of incentives for distributed generation.

2. In D.01-03-073, the Commission addressed the issue of how to coordinate the § 399.15(b) self-generation program with the CEC's Emerging Renewables Buy-Down Program. The decision text, conclusions of law and ordering paragraphs of D.01-03-073 are silent on the issue of how to coordinate with other entities or incentive programs, whether offered by state, local, regional or federal agencies. The only reference to this issue is in the first sentence of Finding of Fact 28. However, this language was inadvertently retained from an earlier version of the decision, where the corresponding decision text was removed.

3. Offering a financial incentive that could be used to supplement the CEC's incentive level, up to the incentive limits established in D.01-03-073, fulfills the objective of targeting the larger renewables that were not being reached under CEC's program without duplicating the CEC's program or efforts. Nothing in the language of D.01-03-073, including Finding of Fact 28, directs that the same approach to coordination should be applied to incentives offered by other state

agencies or programs. Nor is there any justification, based on D.01-03-073 or the record in this proceeding, for treating other state sources of funding differently from federal or local sources in the calculation of program incentives.

4. The approach to coordination with incentives from federal and local agencies contained in the current Program Handbook enables a project developer to effectively leverage financial resources from a variety of sources, while ensuring that the combined contributions from public entities do not exceed the out-of-pocket expenses for the project. This approach should be applied consistently to all public funding sources (other than the CEC's Emerging Renewables Buy-Down Program), including municipal utilities.

Conclusions of Law

1. SCAQMD's Petition For Modification of D.01-03-073 should be granted.

2. Section 3.4.3 of the Program Handbook should be modified as discussed in this decision.

3. In order to proceed expeditiously with implementing the § 399.15(b) self-generation program consistent with today's clarifications, this decision should be effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 01-03-073 filed on December 7, 2001 by the South Coast Air Quality Management District is granted.

2. D.01-03-073 is modified as follows:

(a) The following paragraph is inserted at the top of page 37, after the paragraph ending with "or utility renewable self-generation incentive payment:"

"For projects receiving incentives under other programs offered by state, regional, federal or local entities (including municipal utilities), the amount of the incentive(s) must be subtracted from the total project cost. In no event, can the combined incentives received under this program and other funding sources exceed the out-of-pocket expenses for the project."

(b) The first sentence of Finding of Fact 28 is deleted.

(c) The following is added to Conclusion of Law 20:

"For projects receiving incentives under other programs offered by state, regional, federal or local entities (including public utilities), the amount of the incentive should be subtracted from the total project cost. In no event, should the combined incentives received under this program and other funding sources exceed the out-of-pocket expenses for the project."

The following is added to Ordering Paragraph 15:

"For projects receiving incentives under other programs offered by state, regional, federal or local entities (including public utilities), the amount of the incentive must be subtracted from the total project cost. In no event, can the combined incentives received under this program and other funding sources exceed the out-of-pocket expenses for the project."

3. Section 3.4.3, "Other Incentives or Rebates" of the Self-Generation Incentive Program Handbook, Revision 1 dated July 26, 2001 and modified on October 29, 2001, is be revised as follows (deletions are noted by strike-outs; additions are underlined):

"~~The combined incentives received from this and any other incentive program offered by state government entities or utilities cannot exceed the incentives offered through this program.~~ Customers installing self-generation systems eligible for the CEC Emerging Renewables Buy-Down Program may augment the funding received from that program with funding available through this program, up to the maximum incentive limits. Customers may not receive incentives for the same self-generation equipment from both Southern California Edison Company and Southern California Gas Company, who generally serve the same service territory and customers. For projects receiving incentives under other programs offered by state, regional, federal or local entities (including public utilities), ~~Federal and local (non-State) incentives are allowed; however,~~ the amount of the incentive must be subtracted from the Total Project Cost (Section 3.4.1). In no event, can the combined incentives received under this program and other funding sources exceed the out-of-pocket expenses for the project. ~~In order to prevent "double dipping,"~~ Applicants are required to disclose information about all other incentives they may receive. Program Administrators will enter applications into a statewide database that will permit universal tracking of applications for this and other programs, such as, but not limited to the CEC Emerging Renewables Buy-Down Program. Tax credits are not considered an incentive that must be disclosed under this requirement. "

This order is effective today.

Dated _____, at San Francisco, California.